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Meeting Record Regarding: Patriot Act Rules

Date: 3/17/2003

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Code
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DOT/OST

Date: 3/17/03

Subject: Patriot Act: Rules

Lead Agency: DOT, DHS, DOD

[illegible]

*If agency does not attend, check box if invited by OIRA: ☒



Driving Trucking's Success

1. THERE SHOULD BE ONLY ONE BACKGROUND CHECK OF A TRUCK DRIVER AGAINST THE FEDERAL DATABASES THAT IS UNIVERSALLY APPLICABLE AND RECOGNIZED.

- A truck driver today may potentially be subject to background checks against the same NCIC database under the following regimes: 1) aviation; 2) ports; 3) carrying hazardous materials; 4) carrying explosives; 5) carrying goods for the Department of Defense; 6) border crossings under the voluntary Free and Secure Trade ("FAST") program; and 7) numerous state and local criminal background check requirements (e.g. ports in Florida and South Carolina)
- It makes no sense to check the same driver against the same database; we are not opposed, however, to periodic checks/renewals (i.e., requiring one check every three years)
- The federal background check regime for truck drivers must preempt all other state and local requirements

2. THE BACKGROUND CHECK MUST BE QUICK AND EFFICIENT WHILE KEEPING COSTS DOWN.

- Earlier estimates by FMCSA regarding implementation of the USA PATRIOT Act predicted the turnaround time for a hazmat endorsement to be between 3-6 months
- Many states do not even allow a person to apply for renewal of a hazmat endorsement more than 30-60 days out (a chart listing state requirements is attached); thus any greater delay would put drivers out of jobs
- The states have neither the infrastructure nor the funds to put in place an efficient system
- Private sector models, including the aviation and banking industries, turn around NCIC checks in 4-7 days
- Any background check regulation should be flexible enough to allow private sector solutions

3. THE DISQUALIFYING CRITERIA SHOULD BE CLEAR AND CONSISTENT AND THE RESULTS OF THE BACKGROUND CHECKS COMMUNICATED TO THE EMPLOYER.

- Under the USA PATRIOT Act, the disqualifying standard is if the Secretary determines the applicant poses a security risk; what does that mean?
- When the Secretary makes a determination that the driver poses a security risk, the driver's employer should be informed concurrently as to why
- THE EMPLOYER, AT A MINIMUM, SHOULD BE AFFORDED LIABILITY PROTECTION FOR EMPLOYMENT DECISIONS ARISING OUT OF A MANDATED BACKGROUND CHECK

4. THE ONLY WORKABLE SOLUTION APPEARS TO BE TYING THE BACKGROUND CHECK TO THE ISSUANCE OF A TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL AND NOT A DRIVER'S HAZARDOUS MATERIALS ENDORSEMENT.

- There are background check requirements at ports and airports; not all drivers carrying goods there have hazmat endorsements to their CDLs
- Many shipper-customers are requiring second forms of identification; a TWIC could become the universally accepted standard
- The CDL was always aimed at a driver's safety fitness; the TWIC could be developed with security fitness in mind

5. IMPLEMENTATION OF THE BACKGROUND CHECK RULE MUST NOT DISRUPT THE FLOW OF COMMERCE.

- Any background check rule should be phased in over a reasonably sufficient period of time to ensure compliance is feasible given the volume of drivers that will be subject to such rule
- Drivers must be permitted to continue driving while the background check is being conducted
- The impact on the trucking industry's ability to continue hauling the Nation's freight must be carefully considered

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